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ABSTRACT

The effect collective bargaining has had on institutional quality as reflected by control over faculty appointments is examined. Focus is on term, temporary, and probationary appointments. The main concerns are found to be reducible to statements about the timing of notifications of reappointment, non-reappointment, or dismissal; statements about performance assessment and subsequent recommendation; and statements about the conditions of dismissal or non-reappointment. Beyond the inclusion of statements of cause, and in the case of dismissal a limited appeal process, unions are concluded to recognize the administrator's right to act decisively, particularly with terms and temporary appointments, and only slightly less so for probationary appointments. There seems to be little effort to develop quality control. (Author/LBH)

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COLLECTIVE BARGAINING PERSPECTIVES

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U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE NATIONAL INSTITUTE OF EDUCATION

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More on Faculty Appointments

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That the quality of a university or college lies in the quality of its faculty and students has been duly noted. Faculty unionism has been said to be one means by which quality control can be exercised by the faculty: a new and more decisive means to stand as guardian of the gates to the professoriate. To find a collective bargaining context within which to frame the content of this issue of *Perspectives* I turned to my library—and found not a single index entry in the first three feet of books, monographs, and assorted publications, as if no one is concerned about the effect collective bargaining has had on institutional quality as reflected by control over faculty appointments. So this issue addresses the collective bargaining contract content related to faculty appointments not covered by Dr. Lilley in the August issue of *Perspectives.*

Term Appointments

By definition a term appointment is for a specific, limited time, does not carry tenure, and generally is awarded in the event of a faculty leave replacement, research assignment, on a part-time irregular basis, in a continuing education program, in a special funded program, or for similar limited service arrangements. The length of the limited time varies considerably, from "generally of one year or less" to as many as seven years. Where the time exceeds one year, there appears to be a series of single year appointments which "imply no obligation on the part of the Board of Trustees for reissuance and may be terminated at the end of the contract period without recourse." The decision not to reissue may be at the discretion of the president on the recommendation of the department and the dean.

An interesting variation is the rolling appointment, taken verbatim from the contract:

> A faculty member shall be eligible after seven (7) years of service at the College, or, for faculty with three (3) or more years of service at other accredited colleges or universities, after four (4) years of service at the college, for a three-year rolling appointment. Three-year rolling appointments shall operate in the following manner:
>
> After one year of service on a three-year rolling appointment, the faculty member will be given a new three-year rolling appointment (i.e. the appointment will roll) if his performance is regarded as satisfactory. If the faculty member's performance is not regarded as satisfactory, the faculty member shall be so notified in writing and will continue on the second year of his three-year rolling appointment. If after the second year of the three-year rolling appointment the faculty member's performance has improved and is regarded as satisfactory at that time, he will be given a new three-year rolling appointment. If the faculty member's performance is still regarded as unsatisfactory he shall be so notified in writing and the contract will not roll. The faculty member will then continue on the third year of his original three-year rolling appointment and that year's appointment will be regarded as terminal.
>
> In all cases of reappointment and three-year rolling appointments, subject to the recommendation of the Academic Dean, the final decision shall rest with the President. In reaching his decision in any given case, the Academic Dean shall rely upon written recommendation by the Department Chairmen.

Regardless of the number of times a term appointment is renewed, it does not appear that term appointment may be used to extend a probationary period. Yet they may lead to appointments other than term. A number of institutions move faculty from term to continuing appointments after a series of successful term appointments, and that shift in appointment status can be automatic, although not usually.

While not always the case, term appointments are granted across all faculty ranks, but not necessarily for the same lengths of time. Witness, for example, this contract provision:

> Professional staff are limited to one term appointment as professor, two term appointments as associate professor, three term appointments as assistant professor, three term appointments as instructor or three term appointments as a member of the non-academically ranked professional staff.
>
> Faculty holding term appointments may be eligible for advancement in rank. And when advancement is granted, if the individual holds full academic rank most likely he will not lose any rights which he may have had in the position from which he was promoted.

Generally, compensation is at the same rate for a term contract as continuing contract. Other terms and conditions of the contract, however, are on an individual basis, and include only those benefits items of the collective bargaining agreement the individual is able to negotiate.

Two frequently addressed issues in regard to term appointments are reappointment and dismissal. The president has the responsibility to notify the faculty member in writing of the Board's decision concerning reappointment and to do so by a contract specified date. Yet a delay in notification may occur, and reasonably so. Thus we find this contract provision:

> In the event that persons covered by this provision are not advised of their renewal status on the dates indicated above, or are not provided with reasons as

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to why such notice in being delayed for a reasonable period their services shall be presumed to have been retained. Nothing herein, however, is to be construed as precluding reasonable delays or even changes in such determinations due to budget uncertainties, unforeseen budget cancellations and impairment.

The nature of dismissal can take two forms. Where the faculty member is on a single year term appointment the president simply must give notice by the proper time. But when the instructor has a term contract of multiple years, then any dismissal prior to the last day of the contract must be for cause.

Temporary Appointments

As definitions go, temporary appointments appear to be little different from term appointments, except, perhaps, for a greater and more consistent emphasis on the length of the appointment. Whereas term appointments initially could be for multiple years, temporary appointments consistently are indicated as being for one year or less. Clearly the intent of the temporary appointment is to last for a few "extra weeks, a quarter, or (a) summer session;" and such appointments are without implications for future employment, even though the contract may be renewed, but rarely renewed more than once.

The reason for temporary appointments also parallels term appointments: sickness, study leave of absence, or sabbatical leave, emergency personal situations, experimental new programs, or appointment for a teaching position after age 65. When such reason arises and a contract is issued, the Union may have the right to be notified of the appointment purpose and duration.

Occasionally a faculty member on temporary appointment may be subsequently employed on a full-time basis. The time served on temporary status may be considered "equivalent to probationary contract in the event that a faculty member is later issued a probationary or full status contract." Or, "The time accrued by faculty on a temporary appointment shall count towards promotion and tenure in the event the temporary full-time faculty member is appointed to a full-time permanent position, if the full-time appointment occurs within one (1) year following the conclusion of the temporary appointment," Most institutional contracts, however, fail to include either of these provisions.

The college president retains the right to make temporary appointments, but not without reservations, as seen in this passage:

> Except in unusual circumstances, temporary full-time members of the instructional staff appointed by the President shall be recommended as academically qualified by the academic department in which they are to serve. Where unusual circumstances exist, the President may appoint temporary full-time members of the instructional staff not recommended as academically qualified by the academic department after consultation with and review by the Faculty Personnel Committee.

The source of these temporary faculty placed before the president is not well taken in contracts generally. Perhaps the most notable avenue for temporary faculty selection lies in this example:

> Any courses previously taught by temporary faculty members and scheduled for all three quarters (excluding summer) and not scheduled for full-time faculty members, shall be offered prior to fall quarter to someone from the employment file of temporary faculty members. The division, with the approval of the appropriate dean, shall establish the order of priority for offering employment to temporary faculty members within the file.
>
> If no instructor from the employment file of the temporary faculty members accepts the position, the division will be notified and the selection of a new temporary faculty member shall begin.
>
> A temporary faculty member shall be dropped from the file upon request of the individual temporary faculty member, or when not employed for two years, excluding summer, or when terminated by the appropriate procedure.
>
> All currently employed temporary faculty members, and all temporary faculty members employed any quarter of last year, shall have their names placed in an employment file of temporary faculty members. New temporary faculty members shall be added to the file after one quarter of employment, subject to evaluation of the division. Any course previously taught by temporary faculty members and not scheduled for full-time faculty members, shall be offered to a temporary faculty member from the temporary faculty member file, provided that the faculty member is qualified to teach the course.

Generally the receiving department or program will pass on to the president its judgment of the "fit" between instructional needs and applicant qualifications. Such judgments are in the form of recommendations.

Overwhelmingly, the terms and conditions of employment of temporary employees are stated in the employee's contract. In general, temporary employees stand aside from the rights, benefits, and privileges provided permanent faculty. It would be most unusual for them to accrue time towards tenure, be eligible for any form of leave, enter the promotion process, qualify for annual salary review, or be eligible for service on any important committees.

The ephemeral intent of temporary employment is most clearly expressed contractually. Its abrupt end may come for a variety of reasons: a more qualified applicant can be found; there is no class offering; class enrollment is insufficient; termination is recommended by an appropriate administrator; or termination may be "at will at any time." Furthermore, an appeal from such a termination decision is precluded by one of two types of passages: (1) "Said temporary faculty members employment may be terminated immediately, without resort to any other provision of the Agreement;" or, (2) "Termination of persons employed under temporary contracts shall not be subject to the grievance procedures hereunder."

Probationary Appointments

The probationary appointment is of an altogether different order from term or temporary appointments. Unlike the firm intention to terminate the latter appointments at a fixed, pre-determined time, probationary appointments are intended to be preludes to the march through academic ranks. Clearly, too, the probationary appointment is distinctly different from being placed on probationary status because of some deficiency discovered during the performance of one's services. The latter is not of concern here. This issue of *Perspectives* treats probationary status only as an initial faculty appointment.

Included in probationary appointment Agreement statements are a variety of concerns, but the main issues are

length of contract, performance assessment, and conditions of non-renewal or dismissal.

The appointments are annually renewable for a single year to a maximum of seven, with the lower numbers far more common. But all agreements do not use fixed maximum times, as these three quotations illustrate.

1. Employment shall be probationary until the faculty served one year as a *full-time* faculty member. (Emphasis added.)
2. The probationary period may be extended by the mutual written consent of the Association and the College.
3. Yearly probationary contracts will be continued until the individual involved either obtains tenure or his or her employment relationship with the Institution is severed.

If during the period of the probationary appointment status a faculty member moves from one institution to another one covered by the same Agreement, the number of years of probationary service carries over also, and only the remaining years of the original probationary appointment period remain to be served. Here and there among institutions not covered by the same Agreement we find one that will accept up to two years of probationary appointment, thus reducing by that number the years of probationary service that need to be served at the new institution.

Even though evaluation appears as a widely distributed condition in probationary appointment statements, there is very little specific substance. Beyond the requirement for annual or semi-annual reviews, the main evaluation features can be seen in the Agreement stating, "This review shall be summarized in writing and discussed with the teacher. The written report shall include the person's strengths, weaknesses and suggestions for improvement."

The main thrust of probationary appointment statements is reserved for the conditions surrounding dismissal and non-reappointment. When the issue is dismissal, four types of conditions arise. Notice is given, but the time factor is usually unstated. We find such passages as "after reasonable advance notice," and "Notice of termination of contract shall be in writing." When a time is stated, thirty days seems to be the outer limit.

It is not always necessary to show cause: "Non-tenured appointments are for one year subject to dismissal without cause;" or "It is understood and agreed between the Association and the College that probationary employees may be terminated in the sole discretion of the College and without recourse to this Agreement or any administrative or court review."

A show of cause or reasons often is required for dismissal, appearing in Agreements as "for just cause," or "and the reasons therefore stated." Rarely are illustrations for dismissal illustrated, but incompetence, physical and/or mental incapacity do show up.

The right of appeal is infrequent: initial administrative decisions are usually final. When an appeal is written as an Agreement provision, that appeal may be through the administration to the Board of Trustees, or through the grievance procedure specified in the Agreement, but not necessarily through all of its steps. We have found, for example, that the more years completed on a probationary appointment, the higher the level of the grievance procedure before a final decision is reached.

For the non-renewal of a probationary appointment, the main Agreement concerns are notice and justification. Notice ranges from three months on the first year of a probationary appointment to one year if the appointment is for multiple years. Although not always required, a casual statement in writing prevails in the Agreements. And while the Union may have the right to notification of the non-renewal of a contract, there seldom is any mention of that condition. There is little provision for an appeal procedure. This general attitude seems well reflected in such passages as, "The Board shall have no responsibility to rehire such instructors for subsequent years," or "Any annual contract with any such employee may or may not be renewed as the Board of Trustees. . .shall see fit."

A few other conditions of probationary appointments appear among Agreements, such as the same rights of academic freedom as tenured faculty; no extra rights or privileges not granted tenured faculty; probationary appointments are retrenched before tenured appointments; and upon successful completion of a probationary appointment the employee shall be given a permanent contract.

Summary

As we examine the Agreements relative to several forms of appointments, we find the main concerns reducible to statements about the timing of notifications of reappointment, non-reappointment or dismissal; statements about performance assessment and subsequent recommendations; and statements about the conditions of dismissal or non-reappointment. Beyond the inclusion of statements of cause, and in the case of dismissal a limited appeal process, Unions appear to recognize the administration's right to act decisively, particularly with terms and temporary appointments, and only slightly less so for probationary appointments.

As a final note, when we read agreement appointment provisions in the classifications reported here, there seems to be little effort to develop quality control.

HIGHER EDUCATION LAW CASES

From time to time we will present a court case briefed by Rose Twomey, a third-year student in the College of Law at West Virginia University.

Columbia Basin College Association of Higher Education v Board of Trustees of Columbia Basin College, 87 Wash. 2d 772, 557 P.2d 852 - Sup. Ct. of Wash., En Banc - Dec. 2, 1976, Rehearing Denied Jan. 11, 1977.

Facts: Washington law (RCW 28B.52.030) states that the faculty representatives can meet, confer and negotiate with the Board of Trustees to communicate the judgment of the faculty prior to adoption by the Board of certain policy changes (here the statute lists policies - though the list is not exhaustive). In 1972 the parties agreed to a negotiation procedure providing (1) submission to a study committee if there are differences, and (2) assistance from an appointed committee in event of an impasse at election of either party. In September, 1973 the parties agreed to a master contract which stated that all items agreed to and reduced to writing during negotiations would be binding until such time as they were modified by mutual consent. In 1974 the faculty Association proposed a master plan and the Board proceeded to negotiate with the Association on the plan. Substantial agreement had been reached by January, 1975. However, at that time the Board decided to rescind all agreements made in contemplation of the 1974-76 period. The Board reasoned that if it decided

not to make any policy changes pursuant to RCW 28B.52.030 it need not consider recommendations for policy changes raised by the Association. Furthermore, the Board claimed that it was not bound by the 1972 and 1973 agreements.

The Association instituted suit in Superior Court, Franklin County. That court decided in favor of the Board.

Issue: Whether the Association could force negotiation over policy changes pursuant to RCW 28B.52.030.

Holding: No.

Reasoning: RCW 28B.52.030 is intended primarily to require the trustees and employees to be receptive to ideas and communicate openly. It is not a collective bargaining act. Recommendations are advisory only and not binding on either party. However. . .

Issue: Whether the lower court was correct in holding that the 1972 and 1973 agreements were no longer binding so that the Board could make up new rules for negotiation.

Holding: No.

Reasoning: The language in the 1972 agreement clearly requires mutual agreement for recission—otherwise, it was to remain in effect indefinitely. The 1973 agreement (which indicated no intent to rescind the 1972 agreement) provided that it would extend automatically from year to year unless either party gave 60 days written notice prior to annual expiration date of intent to amend. The court found no evidence of such intent.

Although the Board was under no compulsion to adopt changes (such as were proposed in the Association's master plan), once it had indicated a determination to negotiate and discuss, it could not suddenly declare any and all suggestions scheduled for discussion to be unacceptable. Such action is contrary to the intent and policy of RCW 28B.52.030. The court, therefore, reversed the finding of the trial court and reinstated the 1972 and 1973 agreements.

Collective Bargaining Perspectives, a monthly publication of the Department of Education Administration, College of Human Resources and Education, West Virginia University, is intended to be a means to distribute information about the union-management contractual conditions which affect the nature of higher education institutions. The information contained in this publication is extracted from an extensive collection of contracts maintained by the Department.